

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

ASPLUNDH TREE EXPERT CO.

Employer¹

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 30

Petitioner

Case No. 34-RC-2005

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

International Union of Operating Engineers Local 30 (herein called Petitioner) seeks to represent a unit of approximately 29 full-time and regular part-time employees involved in the trimming of trees along roadsides, including foremen, tree trimmers, ground men, spray foremen, helpers, and permission men (herein called roadside employees) employed by Asplundh Tree Expert, Inc. (herein called the Employer) in its Torrington, Connecticut district. Although otherwise in accord as to the scope and composition of the unit, the Employer, contrary to the Petitioner, would also include nine

¹ The name of the Employer appears as amended at the hearing.

employees in the same positions in the Torrington district who trim trees that are not located along roadsides (herein called off-road employees). The Employer further contends that a unit limited to the roadside and off-road employees in the Torrington district is inappropriate and that the smallest appropriate unit must include all roadside employees in its other four Connecticut districts. The Petitioner is willing to proceed to an election in any unit found appropriate. For the reasons noted below, I find that the petitioned-for unit must include the nine off-road employees in the Torrington district because they share a sufficient community of interest with the petitioned-for employees to require their inclusion. However, I have rejected the Employer's contention that the smallest appropriate unit must include all roadside employees in the Employer's other four Connecticut districts.

1. Overall Operations

The Employer provides line clearance tree-trimming services to electric public utility companies nationwide. This entails trimming trees and brush away from overhead power lines to avoid potential power outages. One of the Employer's operating regions, Region 46, covers the entire State of Connecticut and parts of Western Massachusetts and Westchester County, New York. Within the Connecticut portion of Region 46, the Employer has contracted with Connecticut Light & Power (CLP) to exclusively provide tree-trimming line clearance service to 5 of CLP's 10 utility districts.² The five CLP districts serviced by the Employer (Torrington, Waterbury, Cheshire, Hartford/Simsbury, and Tolland/Enfield) are contiguous and are generally located in the northern half of Connecticut.³

Primarily responsible for the overall operation of Region 46 in Connecticut is Supervisor of Operations-CLP Carl Junghans. Junghans is based in the Employer's regional office in Watertown, Connecticut and is responsible for overseeing the Employer's CLP operations, including the Employer's labor policies, within the five

² Region 46 also serves as the headquarters for several of the Employer's other divisions that provide tree-trimming services to residential and other commercial customers in Connecticut. Neither the Union nor the Employer seeks to include in the unit any employees from those other divisions, as both agree that a unit limited to the employees who provide services to CLP is appropriate.

³ At the time of the hearing, several other tree-trimming contractors serviced the five remaining CLP districts.

districts. Each district has a general foreman who reports to Junghans. Todd Marincheck is the general foreman for the Torrington district. Each general foreman is responsible for directly coordinating, supervising, training, evaluating, and disciplining all roadside employees assigned to their district. Each district maintains its own complement of trucks and equipment, which are reserved for use by roadside employees in that district. All roadside and off-road employees in Region 46 share common wages, benefits, hours, and other working conditions, including an OSHA-mandated annual hearing test, and all attend an annual picnic for Region 46 employees. There is no history of collective bargaining regarding any of these employees.

a. Roadside Employees

All roadside employees, except permission men as explained below, are assigned to a specific crew regardless of their district location. Each crew has either two or three employees consisting of a foreman and either a ground man, an operator, or both. Roadside crews typically use a truck equipped with a “bucket” and a wood chipper with which to clear trees and brush alongside the road. However, an unspecified number of roadside crews, including crews within the Torrington district, use a “split dump truck,” which does not have a bucket, thus requiring the foreman or operator on such crews to manually climb trees in order to perform trimming work. As described in more detail infra, roadside crews, including crews within the Torrington district, also occasionally perform the same trimming duties performed by off-road employees.

Roadside foremen, who report directly to the general foreman in their district, are generally responsible for directing the work of the ground men and operators on their crew, and for ensuring that proper training is ongoing and safety practices followed. They trim trees, drive the truck assigned to the crew, operate other equipment, and spray herbicide on tree stumps to inhibit future growth. Ground men are in effect tree trimmers in training. They primarily flag traffic and feed cut branches and brush into a wood chipper. Operators use ropes to help the foreman lower limbs out of trees, and also perform both tree trimming and ground man duties as necessary. Permission men, who are not assigned to a specific crew, drive pick-up trucks throughout their assigned district in order to obtain permission from private property owners to trim trees and

brush on their property. Once such consent is obtained, permission men convey the written consent forms either to the general foreman or directly to roadside and off-road crews. Permission men also inform town wardens about the Employer's trimming operations occurring within that town's jurisdiction; receive and convey instructions from CLP representatives regarding emergent work; and periodically assist roadside crews in flagging traffic, retrieving supplies, and training newer employees.⁴

There are 29 employees permanently assigned to the Torrington district: four permission men and nine crews consisting of 25 roadside employees.⁵ All 29 of these Torrington-based employees report directly and exclusively to Marincheck. Marincheck conducts a weekly safety training meeting, which is attended by all Torrington district employees. Such training sessions are usually held in one of the parking lots utilized by the Employer in the Torrington district. On occasion, roadside employees from the Torrington district are also assigned to perform roadside duties in other locations within Region 46, including the other four Connecticut districts. These assignments are primarily necessitated to meet fluctuations in work orders and storm emergencies. In this regard, the record shows that during the past 18 months, six roadside employees from the Torrington district have spent about one month working in the Hartford/Simsbury district, and five other roadside employees from the Torrington district have worked between one to two days per week over a seven-month period in the Hartford/Simsbury and Waterbury districts. However, whenever roadside employees from the Torrington district work in other districts, they continue to report exclusively to Marincheck, use their regularly assigned trucks and equipment, and do not have any work-related contact with roadside crews from those other districts. Conversely, the record shows that during the past 18 months, 12 roadside employees from one of the Employer's other four Connecticut districts have spent between two days and three months working within the Torrington district. Here too, the non-Torrington based roadside employees report exclusively to the general foreman from

⁴ The record is silent regarding the duties of helper and spray foreman.

⁵ There are 36 roadside crews consisting of 73 employees assigned to the other four Connecticut districts: 12 crews with 21 employees in Waterbury; 6 crews with 13 employees in Cheshire; 9 crews with 21 employees in Hartford/Simsbury; and 9 crews with 18 employees in Tolland/Enfield.

their “home” district, use their regularly assigned trucks and equipment, and have no work-related contact with roadside employees from the Torrington district.

Regarding permanent transfers of roadside employees to or from the Torrington district, the record shows that about two years ago, the Employer completed a one-time permanent transfer of nine roadside employees from the Waterbury district into the Torrington district. There is no evidence of roadside employees from the Torrington district permanently transferring to other districts.

b. Off-Road Employees

The Employer maintains three off-road crews consisting of nine employees, who trim trees and brush near high voltage power lines. Such areas veer away from the public road onto private property and right-of-ways and are beyond the reach of the bucket trucks typically used by roadside crews. Each off-road crew has a foreman, along with an operator, a ground man, or both. Similar to roadside crews from the Torrington district, each off-road crew is assigned to, and based from, the Torrington district where they each report exclusively to Marincheck. Marincheck assigns the three off-road crews to any location within the five Connecticut districts. In this regard, during the past year, off-road crews spent about 20% of their time working in the Torrington district, and the remainder of their time in the other four districts. There is no evidence of any work-related contact between off-road and roadside employees.

Off-road employees generally have the same skills and perform the same tree trimming duties as roadside employees. However, off-road employees also periodically clear and mow areas in order to access trees that must be trimmed. In addition, the off-road crews use pick-up trucks, split dump trucks, or “timberjacks,” the latter of which is a tractor-like truck with a “bucket” capable of maneuvering over rough terrain. Because most of their work entails trimming areas inaccessible to any type of bucket truck, off-road employees usually must climb trees and are therefore more skilled in this regard than their roadside counterparts.

Off-road crews spend approximately one to two months each year performing roadside duties. Although not entirely clear, it appears that under such circumstances off-road crews either work as an independent roadside crew or are merged into an

existing roadside crew to assist with ground man duties.⁶ As previously indicated, roadside employees may supplement the off-road crews for about one month per year. In this regard, the record reveals that during the past year, three roadside employees from the Tolland/Enfield district were assigned to an off-road crew for about one month.

2. Conclusion

Based upon the above and the record as a whole, I find that the smallest appropriate unit must include all employees, including off-road employees, assigned to the Torrington district. *The F.A. Bartlett Tree Expert Co.*, 132 NLRB 1526 (1961); see also *New England Telephone and Telegraph Co.*, 249 NLRB 1167 (1980); *Michigan Bell Telephone Co.*, 192 NLRB 1212 (1971); *Iroquois Telephone Corp.*, 169 NLRB 344 (1068). In reaching this conclusion, I note that all Torrington district employees work in a distinct geographic area co-extensive with an administrative sub-division, and under the separate supervision of a general foreman with substantial autonomy in controlling the day-to-day activities of those employees. Moreover, those employees have regular work-related contacts with each other during the weekly safety meetings held by Marincheck. Accordingly, I will include the nine off-road employees in the petitioned-for unit.

I further find, however, that roadside employees from the other four Connecticut districts lack a sufficient community of interest with roadside and off-road employees in the Torrington district to require their inclusion in the petitioned-for unit. *New England Telephone and Telegraph Co.*, *supra*, at 1168; *Iroquois Telephone Corp.*, *supra*, at 345. In this regard, I note that although they share common wages, benefits, and hours of work, the roadside employees who are not based in the Torrington district are functionally independent of the Torrington-based employees. Thus, employees from the other four districts have separate district-based supervision, training, equipment and supplies. Moreover, there is minimal interchange, transfer or contact between employees assigned to the Torrington district and the roadside employees in the other

⁶ The record does not indicate whether such roadside duties performed by off-road crews are within the Torrington district, the other four districts, or both.

four Connecticut districts. Accordingly, I will exclude the 73 roadside employees from the other four Connecticut districts from the petitioned-for unit.⁷

In reaching this conclusion, I note that there is insufficient evidence in the record to support the Employer's additional contention that a unit limited to employees in the Torrington district is not appropriate because of the imminent implementation of certain changes involving its Connecticut operations. In this regard, the Employer asserts that beginning on January 1, 2003, it will begin servicing all ten of CLP's utility districts in Connecticut. As a result of this change, it intends to dissolve its present district-based structure in favor of a "function"-based structure under which roadside employees could be assigned to work anywhere in Connecticut based on the type of line clearance work their particular crew will perform. However, the record is unclear as to the contemplated changes and how those changes will impact employees in the petitioned-for unit. In this regard, there is no record evidence that the contemplated changes will result in the reassignment of any roadside or off-road employee from the Torrington district to other locations or to different supervision.

Accordingly, based upon the above and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time roadside and off-road employees, including foreman, tree trimmers, ground men, spray foremen, helpers, and permission men, employed by the Employer in its Torrington, Connecticut district; but excluding all other employees, roadside employees in its other Connecticut districts, and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

⁷ Although off-road employees, who I have included in the unit over the Petitioner's objection, may spend up to 80% of their time in the other four Connecticut districts, this factor alone does not constitute sufficient evidence of interchange or contact to warrant a contrary conclusion.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 30.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before December 26, 2002. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 2, 2003.

Dated at Hartford, Connecticut this 18th day of December, 2002.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

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